

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DATE FILED: 12/28/2023

GONZALEZ,

Plaintiff,

-against-

CLIPPER CONNECTION, LLC,

Defendant.

23-cv-07930 (ALC)

ORDER

ANDREW L. CARTER, JR., United States District Judge:

On September 7, 2023, Plaintiff filed a Complaint commencing this action against Defendant Clipper Connection, LLC but failed to serve Defendant with process in a timely manner. ECF No. 1. The Court ordered Plaintiff to show cause as to why this action should not be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m). ECF No. 5. Plaintiff filed a timely response to the Court's Order to Show Cause and stated that "Plaintiff has attempted to reach the Defendant via phone and via process server" unsuccessfully and that "Plaintiff intends on attempting service via the Secretary of State."

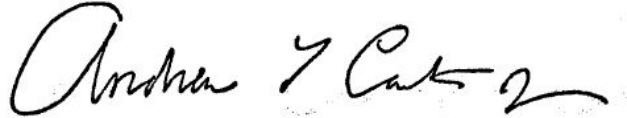
Under the law of this Circuit, good cause exists to excuse a failure to timely serve a defendant only in "exceptional circumstances where the plaintiff's failure to serve process in a timely manner was the result of circumstances beyond its control." *Ping Chen ex rel. U.S. v. EMSL Analytical, Inc.*, 966 F. Supp. 2d 282, 306 (S.D.N.Y. 2013) (quoting *E. Refractories Co. v. Forty Eight Insulations, Inc.*, 187 F.R.D. 503, 505 (S.D.N.Y. 1999)). The burden of proof to show good cause is a "heavy one," *Spinale v. United States*, No. 03-CV-01704 (KMW) (JCF), 2005 U.S. Dist. LEXIS 4608, 2005 WL 659150, at *3 (S.D.N.Y. Mar. 16, 2005) (citation omitted), and "[a]n attorney's inadvertence, neglect, mistake or misplaced reliance does not constitute good cause." *Ping Chen*, 966 F. Supp. 2d at 306 (quoting *E. Refractories Co.*, 187 F.R.D. at 505).

The Court finds that Plaintiff has not shown good cause for their failure to serve Defendant.

This case is therefore **DISMISSED** without prejudice.

SO ORDERED.

Dated: December 28, 2023
New York, New York

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written over a horizontal line.

ANDREW L. CARTER, JR.
United States District Judge